

PARENTAL RIGHTS IN IDAHO PUBLIC SCHOOLS

FOUNDING PRINCIPLES, U.S. SUPREME COURT JURISPRUDENCE, AND FEDERAL AND STATE LAW:

1. **Declaration of Independence** (1776). “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain **unalienable Rights**, that among these are Life, **Liberty** and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed...”
2. **Ninth Amendment** (1791) to the U.S. Constitution. “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”
3. **Due Process Clause** of the **Fourteenth Amendment** (1868) to the U.S. Constitution. “...nor shall any State deprive any person of life, **liberty**, or property, without due process of law...”
4. In *Meyer v. Nebraska*, 262 U.S. 390 (1923), the U.S. Supreme Court held that the “liberty” protected by the Due Process Clause includes the rights of parents to “establish a home and bring up children” and “to control the education of their own.” Moreover, the Court stated that, “it is the natural duty of the parent to give his children education suitable to their station in life.”
5. In *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), the Court ruled that the “fundamental theory of liberty upon which all governments in this Union repose excluded any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right and the high duty, to recognize and prepare him for additional obligations.”
6. In *Prince v. Massachusetts*, 321 U.S. 158 (1944), the Court confirmed that there is a “constitutional dimension to the right of parents to direct the upbringing of their children. It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation or obligations the state can neither supply nor hinder.”
7. In *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the Court made clear that “The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.”
8. In *Parham v. J.R.*, 442 U.S. 584 (1979), the Court found that “The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition.”
9. In *Troxel v. Granville*, 530 U.S. 57 (2000), the Court recognized that the right of parents to rear their children is a “**fundamental**” **right**. In light of extensive precedent, the Court found, “it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”
10. In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Court explained that rights that are "fundamental to the Nation's scheme of ordered liberty" or that are "deeply rooted in this Nation's history and tradition" are appropriately applied to the states through the Fourteenth Amendment.
11. U.S. courts apply the “**Strict Scrutiny**” standard when a fundamental Constitutional right is infringed, namely, those identified in the Bill of Rights, or those the Supreme Court has deemed fundamental rights protected by the Due Process Clause of the Fourteenth Amendment. To pass strict scrutiny (i.e. to warrant infringement on a Constitutional or fundamental right), a law or policy (e.g., interfering with parents’ liberty to rear and educate their children) must satisfy a three-prong test:
 - A. It must be justified by a **compelling governmental interest** (i.e., something necessary or crucial, as opposed to something merely preferred);
 - B. The law or policy must be **narrowly tailored** to achieve that goal or interest; and
 - C. The law or policy **must be the least restrictive means** for achieving that interest.
12. **42 U.S. Code § 1983 - Civil action for Deprivation of Rights**. The Civil Rights Act of 1871 provides that “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...” Thus, individual school board members, school administrators, teachers (and other individuals acting at their behest) may be sued individually, and found personally liable, for their violative conduct.
13. **Section 32 -1010, Idaho Code (2015). Parental Rights**.
 - (1) The interests and role of parents in the care, custody and control of their children are both implicit in the concept of ordered liberty and deeply rooted in our nation's history and tradition. They are also among the **unalienable rights** retained by the

people under the **ninth amendment to the constitution of the United States.**

- (2) The interests of the parents includes the high duty and **right** to nurture and direct their children's destiny, including their upbringing and **education.**
- (3) The state of Idaho has independent authority to protect its parents' **fundamental right** to nurture and direct their children's destiny, upbringing and **education.**
- (4) The protections and rights recognized in sections 32-1011 through 32-1013, Idaho Code, are rooted in the due process of law guaranteed pursuant to section 13, article I, of the constitution of the state of Idaho.
- (5) Governmental efforts that restrict or interfere with these fundamental rights are only permitted if that restriction or interference satisfies the **strict scrutiny** standard provided in section 32-1013, Idaho Code.
- (6) Nothing in this act shall be construed as altering the established presumption in favor of the constitutionality of statutes and regulations.

PRACTICAL APPLICATION OF YOUR PARENTAL RIGHTS:

1. Right to Prohibit Testing

- A. You have a right to inform and instruct the school district that your child is not permitted to participate in:
 - i. Any testing associated with Common Core (CCSSI);
 - ii. Any testing associated with Idaho Core Standards; and
 - iii. Smarter Balanced Assessment Consortium (SBAC) testing.
- B. If, in contravention of your instruction, any school district employee or agent *attempts or threatens to compel your child's participation*, you have the right to seek a prohibitive injunction prior to testing. Given that U.S. Constitutional/fundamental rights are at issue, the injunction could be sought in state or federal court.
- C. If, in contravention of your instruction, any school district employee or agent *forces your child to participate in any such testing*, you have the right to file suit against the school district and the individual(s) responsible to collect monetary damages. The lawsuit could be filed in state or federal court.

2. Right to Prohibit Data Collection, Transmission, and Dissemination

- A. You have the right to inform and instruct the school district that no data related to your child may be collected, transmitted or disseminated to third parties for any purposes, including those related to Common Core or Idaho Core Standards.
- B. If, in contravention of your instruction, any school district employee or agent *attempts or threatens to collect, transmit or disseminate any data* related to your child to third parties, you have the right to seek a prohibitive injunction prior to the collection or transmission of any such data. The injunction could be sought in state or federal court.
- C. If, in contravention of your instruction, any school district employee or agent *collects, transmits or disseminates any data related to your child to third parties*, you have the right to file suit against the school district and the individual(s) responsible to collect monetary damages. The lawsuit could be filed in state or federal court.

3. Right to Exercise Educational Alternatives

- A. You have the right to homeschool your children.
- B. You have the right to enroll your children in a private school.
- C. You have the right to participate in educational cooperatives with other homeschooling families.
- D. You have the right to establish your own private school to compete with the public school in the educational marketplace.

4. Right to Seek Political Recourse

- A. You have the right to petition the school board, and/or its individual members, for a redress of your grievances, including seeking the termination of administrators and faculty who act, or threaten to act, in contravention of your instructions regarding testing and data collection.
- B. You have the right to petition your state and national legislators for a redress of your grievances, including seeking changes to, or a repeal of, existing law.
- C. You have the right to run for the school board if you meet the qualifications.
- D. You have the right to organize and enlist the help of other parents, taxpayers and concerned citizens in effecting changes to personnel and legislation.
- E. You have the right to privately and publicly demand the resignation of any school board member, administrator, or faculty member who defies the U.S. Constitution, the U.S. Supreme Court, Idaho law and the will of the people.